IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 13261 of 2006(D)

PETITIONER:

P.VIJAYAKUMARAN NAIR, PRINCIPAL-IN-CHARGE, V.P.S.HIGHER SECONDARY SCHOOL FOR BOYS VENGANOOR, TRIVANDRUM.

BY ADV. SRI.S.MOHANDAS

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVT. SECRETARIAT, TRIVANDRUM.

2. REGIONAL DEPUTY DIRECTOR, HIGHER SECONDARY EDUCATION, CORPORATION BUILDING, 4TH FLOOR, PALAYAM, TRIVANDRUM.

3. MANAGER, V.P.S. HIGHER SECONDARY SCHOOL FOR BOYS, VENGANOOR, TRIVANDRUM.

4. SRI.S.NARAYANAN NAIR, H.S.S.T (ENGLISH) V.P.S. HIGHER SECONDARY SCHOOL FOR BOYS VENGANOOR, TRIVANDRUM.

BY ADV. SRI.B.JAYASURYA

GOVT.PLEADER SRI.A.J.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 7/11/2006 ALONG WITH W.P.NOS. 14176 & 22939/06, THE COURT ON 13/04/2007 DELIVERED THE FOLLOWING:

APPENDIX (WP.13261/06)

EXT.P1: COPY OF MINUTES OF SELECTION COMMITTEE.

EXT.P2: COPY OF PROMOTION ORDER DT. 31/3/2006.

EXT.P3: COPY OF ORDER DT. 7/4/2006.

EXT.P4: COPY OF LETTER DT. 9/5/2006.

EXT.P5: EXTRACTS FROM SERVICE BOOK OF PETR.

EXT.P6: COPY OF LETTER DT. 16/5/2006 ISSUED BY R2.

EXT.P7: A COPY OF GOVT. LETTER DT. 20/5/2006.

RESPONDENTS' EXHIBITS:

EXT.R4(A): COPY OF ORDER DT. 20/7/2001.

EXT.R4(B): TRUE COPY OF COMMON JUDGMENT DT. 15/11/2001.

EXT.R4(C): TRUE COPY OF JUDGMENT IN WA.27/2002 DT.4/2/2002.

EXT.R4(D): TRUE COPY OF ORDER DT. 30/6/2003.

EXT.R4(E): TRUE COPY OF JUDGMENT DT. 18/11/2005 IN WP.22763/03

EXT.R4(F): TRUE COPY OF ORDER DT. 20/5/2006.

EXT.R4(G): TRUE COPY OF ORDER DT. 17/7/2006 ISSUED BY GOVT.

EXT.R4(H): TRUE COPY OF JUDGMENT IN WP.11048/06 DT. 24/8/2006.

A.K. Basheer, J.

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W.P(C) No. 13261, 14176
& 22939/2006

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Dated this the 13th day of April, 2007.

J U D G M E N T

Since the issues and parties involved in these three writ petitions are common, they are being disposed of by this common judgment. The parties and documents as they do appear in W.P.No.13261/06 will be referred to in the judgment hereafter unless otherwise indicated.

2. Petitioner had been working as Higher Secondary School Teacher in the V.P.S. Higher Secondary School for Boys Venganoor, Trivandrum eversince September 14, 1998. Petitioner claimed that he was fully qualified to be promoted to the post of Principal which fell vacant on April 1, 2006. Respondent No.4 who is admittedly senior to the petitioner was the rival claimant for the post. The Selection Committee constituted for the purpose gave its nod of approval in favour of the petitioner and he was selected. In fact respondent No.4 had refused to participate in the selection process since according to him, petitioner was not entitled to be considered at all for the post, since he did not have requisite length of approved service as HSST to his credit. Respondent No. 4 contended that he being the only eligible candidate for promotion, he ought to have been appointed. The dispute with regard to the inter se seniority between the petitioner and respondent No.4 as HSST (English), has been settled now as it is on record that the seniority of respondent No.4 as HSST has been upheld. A learned single Judge of this Court in Ext.R4(e) judgment confirmed

the order issued by the Department and held that respondent No.4 was entitled to be appointed as HSST in English in the school with effect from August 24, 1998. In other words, the learned single Judge found that respondent No.4 was senior to the petitioner. The above judgment has been affirmed by a Division Bench in WA.No.72/2006 by judgment dated November 14, 2006.

3. The question involved in these three writ petitions is whether the appointment of the petitioner as Principal is liable to be approved or not. Since, as mentioned earlier, going by the seniority of the rival claimants, respondent No.4 was entitled to be appointed to the post. The Department also took the view that the proposal made by the Manager for appointment of the petitioner as Principal was not in accordance with the Special Rules. Accordingly in Ext.P4 the Regional Deputy Director informed the Manager that the petitioner was being "permitted to act as Principal in charge on a temporary and provisional internal arrangement basis" for two months with effect from April 1, 2006. In W.P.No.13261/2006, petitioner takes exception to the restrictive clause in Ext.P4 and prays for issuance of a writ to mandamus or such other appropriate direction to the Department to permit him to continue as Principal without any interruption.

4. The other two writ petitions viz., W.P;Nos.14176/06 and 22939/06 have been filed by the Manager of the school. The challenge in these two writ petitions is primarily directed against Ext.P10 order passed by the Government upholding the seniority of respondent No.4. In the process, the Manager has also challenged Ext.P6 direction issued to him by the Regional Deputy Director to appoint a Principal in the school in accordance with the Rules. The Manager has also

questioned the legality and propriety of Ext.P7 order of the Director of Higher Secondary Education directing him to recognise the seniority of respondent No.4 to get appointment as Principal.

5. As mentioned earlier, respondent No.4 is held to be senior to the petitioner. It is not in dispute that respondent No.4 had been working in the school as HSA with effect from June 12, 1987. His appointment as Higher secondary school Teacher (English) was approved with effect from August 24, 1998. It is the admitted position that petitioner was appointed as Higher Secondary School Teacher (English) only with effect from September 14, 1998. The dispute with regard to the inter se seniority of the petitioner and respondent No.4 has been settled in favour of the latter in WA.No.72/2006. If that be the position, seniority of respondent No.3 as HSST could not have been overlooked while appointing the petitioner as the Principal. In Ext.P4 (g) (Ext.P10 in WP.22939/06) the Government has taken the view that petitioner would not have come in the zone of consideration for the post of Principal at all since he had only 11 years approved service to his credit. The period during which he had worked as Guest Lecturer could not have been reckoned as approved teaching experience for the purpose. It is in this context that the Manager has challenged Ext.P8 circular in WP.No.22939/06 issued by the Government stipulating that "12 years approved teaching experience means approved teaching experience at LP, UP, High School, Vocational Higher Secondary and Junior Lecturer level except the teaching experience as Guest Lecturers or on daily wages and on contract basis."(emphasis supplied). But while passing Ext.R4(d) order the Government had also adverted to the observations made by a learned single Judge of this Court in

WP.No.22863/03 to the effect that the seniority of respondent No.4 had been duly recognised by the Government in its earlier order. The said judgment of the learned single Judge has now been affirmed by the Division Bench in WA.72/06.

6. Though the Manager has challenged the Ext.P8 circular referred to above, I do not find any illegality or infirmity in the clause stipulating that the period of service by a teacher as Guest Lecturer could not be counted as teaching experience for promotion to the post of Principal.

7. In the above facts and circumstances the stand taken by the Department in Ext.P4 as regards the selection and appointment of petitioner in WP.13261/06 cannot be faulted. Therefore it necessarily follows that a fresh selection has to be held to the post of Principal. The Manager shall conduct fresh selection to the post of Principal which fell vacant on April 1, 1998 in accordance with the relevant Rules. This shall be done as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment. Till such time the selection process is completed, the petitioner shall be allowed to continue as Principal-in-charge for the purpose of disbursement of salary to the teaching and non-teaching staff in the school and for the day to day administration of the school. W.P.No.13261/06 is dismissed with the above direction.

WP.Nos.14176/06 and 22939/06 are without any merit. Accordingly they are also dismissed.

A.K. Basheer
Judge.